

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of the)	CC Docket No. 02-6
Decision of the)	
Universal Service Administrative Company)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Schools and Libraries Universal Service)	Charlotte County School District
Support Mechanism)	Funding Year 2008
		Form 471 Application No. 606829
		FRN 1672288

**CHARLOTTE COUNTY SCHOOL DISTRICT REQUEST FOR REVIEW
OF DECISION BY THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY**

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SUMMARY

As described in detail in the Request for Review, the Schools & Libraries Division (the “SLD”) of the Universal Service Administrative Company (the “USAC”) has used a legally unsubstantiated and draconian basis for denial of the Charlotte County School District Funding Year 2008 (“FY 2008”) Funding Request Number (“FRN”) 1672288 as identified in its Form 471 Application Number 606829. The Charlotte County School District is seeking Federal Communications Commission (the “Commission”) review and reversal of that part of the Funding Commitment Decision Letter dated September 15, 2010 (the “September 15, 2010 FCDL”) which contains the denial. The subject of the denial is a request to pay a vendor, Trillion Partners, Inc., for the provision of Wide Area Network and Internet Services to the Charlotte County School District’s schools. The Funding Year 2008 request was part of a five-year contract the Charlotte County School District awarded to Trillion Partners, Inc. after a 28-day competitive bidding process, from November 6, 2007 through December 4, 2007, in which Trillion Partners was the only bidder.

The USAC has erroneously equated the payment of certain conference-related travel, lodging and meal expenses by Trillion Partners, Inc. with a violation of the requirement for a “fair and open” competitive bidding process, without any consideration of the timing, circumstances or amount of the expenses. Nor does the USAC provide any explanation as to how the content of any documentation relied upon even indicates a violation or that there is any link between the expenses in question and a competitive bidding process. In short, the USAC’s denial of the funding request without any evidence that the expenses at issue had any impact whatsoever on the competitive bidding process is not supported at all by the Commission’s rules

and policies in effect at the time the expenses were incurred, or the competitive bidding process occurred, or the FCC Form 471 application was filed.

The USAC must apply the rules in effect at the time of the Charlotte County School District's application and to do otherwise would be retroactive rulemaking. It does not cite to any Commission rules governing gifts that the Charlotte County School District violated or explain the basis for any such violation. However, the USAC appears to be prematurely and inappropriately applying the new gift rules proposed by the FCC in May 2010 and adopted in September, 2010. It is fundamentally unfair for the USAC to apply rules that were adopted in 2010 to the 2008 funding process where all the relevant events occurred 2-3 years earlier.

When applied properly, the FCC's rules and expressed policies in effect during the competitive bidding process in this case and the filing of the FCC Form 471 for the subject 2008 funding year request demonstrate that the Charlotte County School District did not violate the "fair and open" requirement for the competitive bidding process or any other rules governing the competitive bidding process. The competitive bidding process is violated when an existing relationship between the applicant and the service provider unfairly influences the outcome of a competitive bidding process or furnishes the service provider with inside information not available to other bidders. This is determined by analyzing each case individually. In this case, there is no connection, expressed or reasonably discernable, between the expenses in question and any competitive bidding process. The timing and substance of the conference-related expenses are unrelated to any competitive bidding process or the services that would be the subject of any such process. Moreover, the notion that the amount of the expenses in question somehow prejudiced the Charlotte County School District into awarding a \$2.5 million contract to Trillion Partners is unrealistic and untenable.

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**CHARLOTTE COUNTY SCHOOL DISTRICT REQUEST FOR REVIEW
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Pursuant to 47 C.F.R. §54.719(c), Charlotte County School District¹, by its attorneys, herein seeks review and reversal by the Federal Communications Commission (the “Commission”) of the Funding Commitment Decision Letter dated September 15, 2010 (the “September 15, 2010 FCDL”) by the Schools & Libraries Division (the “SLD”) of the Universal Service Administrative Company (the “USAC”)² which denies the Charlotte County School District’s Funding Year 2008 (“FY 2008”) Funding Request Number (“FRN”) 1672288 as identified in its Form 471 Application Number 606829.³ The FRN in question concerns a funding year 2008 request to pay Trillion Partners, Inc. (“Trillion Partners”) for Wide Area

¹ The Charlotte County School District consists of over 16,000 students and 2,000 teachers located on 19 K-12 campuses in a rural area of southwest Florida. Its mission is to “provide an innovative educational environment that allows and inspires success for everyone.” “Charlotte County Public Schools Fact Sheet,” <http://www.yourcharlotteschools.net/documents/media/2010QuickFacts.pdf>.

² Copy attached as Exhibit A.

³ Copy attached as Exhibit B.

Network (“WAN”) and Internet services provided to the Charlotte County School District.⁴ The Charlotte County School District respectfully requests that the Commission reverse the September 15, 2010 FCDL to the extent that it denies FRN 1672288 and remand the underlying Form 471 application no. 606829 for immediate approval.

In the September 15, 2010 FCDL, the SLD⁵ denied the FRN 1672288 request because:

“the documents provided by you and/or your vendor indicates that there was not a fair and open competitive bid process free from conflicts of interest. The documentation provided by you and/or your service provider indicates that prior to/throughout your contractual relationship with the service provider listed on the FRN, that you were offered and accepted either gifts, meals, gratuities, entertainment from the service provider, WHICH resulted in a competitive process that was no longer fair and open and therefore funding is denied.”⁶

As will be shown below, USAC’s explanation for the denial is fatally flawed as a matter of law and substantively inadequate as a basis for the denial.

I. BACKGROUND

In 2003, Charlotte County, as an older community, did not have the buried infrastructure necessary to support the instructional goals of the Charlotte County School District at a reasonable price. To get the communications speeds needed at a reasonable cost, the Charlotte County School District made a cost-effective decision to establish a wireless infrastructure. In 2002, the Charlotte County School District posted the FCC Form 470 for WAN and Internet services to be provided during a five-year contract, commencing on July 1, 2003. The predecessor-in-interest to Trillion Partners was selected as the winning bidder and was subsequently awarded a five-year contract through FY2007, ending on June 30, 2008. In 2003, the Charlotte County School District filed the FCC Form 471 for FY2003. During the term of this contract, Trillion Partners installed several antennas and 15 poles ranging from 85 feet to

⁴ Funding year 2008 extends from July 1, 2008 through June 30, 2009.

⁵ Though the September 15, 2010 letter was from the SLD, this appeal will refer to USAC, as opposed to SLD, to avoid confusion.

⁶ September 15, 2010 FCDL at 11.

140 feet. These poles were buried 20 feet into the ground and secured with cement. This was necessary to make sure they were safe enough to survive a hurricane. On August 14, 2004, Hurricane Charley came through the school district and although it destroyed six of the schools, all of the poles survived.⁷

In preparation for the next five-year contract term, on November 6, 2007, the Charlotte County School District posted the FCC Form 470 (36708000062396) for WAN and Internet services to be provided for FY2008 through FY2012, commencing on July 1, 2008.⁸ After the 28-day competitive bidding process was completed, it was determined that Trillion Partners was the only bidder. The Charlotte County School District then evaluated and selected Trillion Partners as the winning bidder. On January 22, 2008, Trillion Partners was awarded a five-year contract, commencing on July 1, 2008. On February 1, 2008, the Charlotte County School District filed the FCC Form 471 for FY2008.

In a letter dated June 4, 2010, the USAC informed the Charlotte County School District that it proposed the denial of Charlotte County School District's FY 2008 Form 471 application 606829 (FRN 167228), FY2009 Form 471 application 656774 (FRN 1797577) and FY2010 Form 471 application (FRN 1957503) (the "June 4 Letter.")⁹ Each of the identified FRNs concerned funding requests to pay Trillion Partners for WAN and Internet services provided to the Charlotte County School District pursuant to the contract that resulted from the FCC Form 470.

In the June 4 Letter, the USAC stated the basis of its denials as follows:

Based on the documentation you have provided, the entire FRNs will be denied because you did not conduct a fair and open competitive bid process free from conflicts of interest. The documentation you provided indicates that you were

⁷ See <http://thejournal.com/articles/2007/09/01/disaster-recovery--courting-disaster.aspx>

⁸ Copy attached as Exhibit C.

⁹ Copy attached as Exhibit D.

offered and accepted valuable meals and entertainment immediately prior to and/or during the process you conducted to select a service [provider] to provide these goods and services from the service provider you selected. Charlotte County SD posted a Form 470 (36708000062936) on November 6, 2007 and awarded a contract in January, 2008 to Trillion Partners for multi-year WAN and Internet services. In 2007 and 2008 Trillion Partners sponsored a Customer Council conference known as VTEC. Mr. Bress attended the conference and Trillion Partners paid for Mr. Bress' travel, meals, gratuities and accommodations. These items approximately total over \$500.00 for each year. Enclosed is a list of expenses paid by Trillion. In Charlotte County SD's response to Mrs. Barbara Cannon, USAC, Mr. Bress discusses that he did receive lunch meals from Trillion Partners representatives (email dated June 25, 2009). These meals and entertainment show that you engaged in non-competitive bidding practices in violation of program rules. Because the competitive bidding process was tainted by these actions, the establishing Form 470 for your Form 471 applications for FY2008, FY2009 and FY2010 are tainted.¹⁰

By letter dated June 23, 2010 (the "June 23 Letter"), the Charlotte County School District disagreed and requested that the USAC reconsider its proposed denials.¹¹

In the September 15, 2010 FCDL, the USAC approved all the FRNs previously proposed for denial except for the Charlotte County School District's FY2008 Form 471 application 606829 (FRN 1672288). As a basis for its denial, USAC stated:

This FRN is denied because the documents provided by you and/or your vendor indicate that there was not a fair and open competitive bid process free from conflicts of interest. The documentation provided by you and/or your service provider indicates that prior to/throughout your contractual relationship with the service provider listed on the FRN, that you were offered and accepted either gifts, meals, gratuities, entertainment from the service provider, WHICH resulted in a competitive process that was no longer fair and open and therefore funding is denied.¹²

Thus, it is only the USAC's denial of the Charlotte County School District's FY 2008 Form 471 application 606829 (FRN 1672288) that is the subject of this Request for Review.

¹⁰ June 4 Letter at p. 1. Mr. Bress is the Director of Learning Through Technology and Media for the Charlotte County School District. Appended hereto is the Declaration of Christopher Bress attesting to the true and correct nature of the factual allegations made herein.

¹¹ Copy attached as Exhibit E. *See also*, "Trillion Partners, Inc. Response to USAC and Appeal to FCC," dated June 21, 2010 ("Trillion Response/Appeal Letter"). A copy of the Trillion Response/Appeal Letter is attached as Exhibit F.

¹² September 15, 2010 FCDL at 11 (emphasis in original.)

II. THE REQUEST FOR REVIEW

A. The USAC's Expressed Basis for Denial of the FY2008 Request Is Insufficient.

In the September 15, 2010 FCDL, the USAC's entire explanation of the denial of FRN 1672288 consists of the following:

This FRN is denied because the documents provided by you and/or your vendor indicate that there was not a fair and open competitive bid process free from conflicts of interest. The documentation provided by you and/or your service provider indicates that prior to/throughout your contractual relationship with the service provider listed on the FRN, that you were offered and accepted either gifts, meals, gratuities, entertainment from the service provider, WHICH resulted in a competitive process that was no longer fair and open and therefore funding is denied.¹³

There is no documentation identified in the September 15, 2010 FCDL beyond a statement that it was provided by "you and/or your service provider," which makes it difficult to address the USAC's denial without knowing the particular documents that form the basis of the denial.¹⁴ The only documentation identified by the USAC in its June 4 Letter is a Trillion Partners Expense Summary and a June 25, 2009 email from Mr. Bress to Mrs. Barbara Cannon. The USAC does not discuss the timing of the "gifts, meals, gratuities, entertainment from the service provider" relative to any competitive bidding process or the circumstances surrounding their provision. Nor does it explain how the content of those documents "indicates that there was not a fair and open competitive bid process free from conflicts of interest." Moreover, the USAC

¹³ Emphasis in original.

¹⁴ This Request for Review seeks review and reversal of the September 15, 2010 FCDL. It is unclear how the USAC traveled from its June 4 Letter to its September 15, 2010 FCDL and what documentation identified in the June 4 Letter actually forms a basis for the September 15, 2010 FCDL. This is particularly troublesome because while the June 4 Letter proposed the denial of multiple FRNs for multiple funding years, the September 15, 2010 FCDL denies only one FRN in one funding year. The remainder of the denials proposed in the June 4 Letter were not effectuated and the associated funding requests were approved in other FCDLs. The Charlotte County School District will address the documentation identified in the June 4 Letter where it appears relevant to the denial in question even though it is not contained in the September 15, 2010 FCDL.

does not cite to any authority for the use of “prior to/throughout your contractual relationship” as the proper timeframe for consideration. In this regard, the USAC ignores that a “competitive bidding process” commences with the posting of an FCC Form 470 and concludes 28 days later with the selection of a successful bidder.

Equally important, the USAC does not explain **how** the acceptance of the “gifts, meals, gratuities, or entertainment” from the service provider resulted in a competitive process that was no longer fair and open in this particular case. Put another way, the USAC does not even attempt to link the gifts, meals, gratuities, or entertainment to the competitive bidding process.

In short, the September 15, 2010 FCDL does not progress beyond an unsupported conclusion that any gifts, meals, gratuities, or entertainment from the service provider to the applicant during a contractual relationship **necessarily** taints the competitive bidding process. There is no analysis of the value of the “gifts, meals, gratuities, or entertainment,” when they were provided relative to the competitive bidding process, or the context in which they were provided. While these flaws are sufficient to require a remand to USAC to correct these fundamental errors, there are multiple compelling reasons, explained below, that require a grant of this Request for Review with instructions to USAC to approve the FRN 1672288.

B. The Basis for the USAC’s September 15, 2010 FCDL Denial Differs Significantly from the Basis For the Proposed Denials in the USAC’s June 4 Letter.

Not only is USAC’s expressed basis for denial in the September 15, 2010 FCDL insufficient, its explanation there differs significantly from the explanation provided only three months earlier in the June 4 Letter. In the June 4 Letter, the USAC stated, in pertinent part, that the FY2008 request “will be denied because you did not conduct a fair and open competitive bid

process free from conflicts of interest.”¹⁵ The letter explains that “[t]he documentation you provided indicates that you were offered and accepted valuable meals and entertainment immediately prior to and/or during the process you conducted to select a service [provider] to provide these goods and services from the service provider you selected.”¹⁶

In its September 15, 2010 FCDL, the USAC **changed** the language of its denial from (a) “valuable meals and entertainment immediately prior to and/or during the process you conducted to select a service [provider] to provide these goods and services from the service provider you selected” to (b) “prior to/throughout your contractual relationship with the service provider listed on the FRN, that you were offered and accepted either gifts, meals, gratuities, entertainment from the service provider.”

As a result, “valuable meals and entertainment” became “gifts, meals, gratuities, entertainment,” and “immediately prior to and/or during the [competitive bidding] process became “prior to/throughout your contractual relationship with the service provider listed on the FRN.” While the underlying facts did not change, the type of allegedly offending conduct and when that conduct is prohibited, according to USAC, changed from the June 4 Letter to the September 15, 2010 FCDL. The Charlotte County School District submits that this change was fundamentally unfair and did not allow the Charlotte County School District an opportunity to address the standard used by the USAC in its September 15, 2010 FCDL. Moreover, the USAC cites no authority for either standard. In any event, as discussed herein, both sets of language are improperly vague and neither is contained in the Commission’s rules.

C. The COMMISSION Must Apply the Rules in Effect at the Time of the FCC Form 471 Filing as to Do Otherwise Would Violate the Rules of Retroactive Rulemaking.

¹⁵ June 4 Letter at p. 1.

¹⁶ *Id.*

As the Commission continues to use the appeal process as necessary to decide alleged competitive bidding violations, it must use the rules in effect at the time of the filing of the FCC Form 471 application in question.¹⁷ The USAC itself has stated that it “does not base findings on rules that were not in effect during the relevant time period.”¹⁸ The USAC has further stated that “[i]f a program beneficiary believes that a finding resulting in a commitment adjustment or recovery is not based on a rule in effect at the time, the beneficiary can appeal the USAC’s commitment adjustment or recovery consistent with the Commission’s rules. [fn. omitted].”¹⁹

In its June 4 Letter, the USAC states that “program rules” were violated.”²⁰ However, the USAC does not identify any “program rules.” Moreover, there are no applicable “program rules” that contain an unconditional prohibition against the payment of “meals, travel and lodging” regardless of amount, timing or circumstances. The FCC had no rules in place at the time that contain any such prohibition and certainly no language that supports the type of zero tolerance policy embraced by the USAC in its September 15, 2010 FCDL. The USAC does not have rulemaking authority; only the Commission can promulgate rules for the e-rate program and, prior to 2010, it had not done so to prohibit the payment of applicant expenses.

In this case, the applicable rules are those that were in effect no later than February 1, 2008, when the Charlotte County School District filed the relevant FCC Form 471. In its June 4 Letter and its September 15 FCDL, the USAC started **prematurely and improperly** applying

¹⁷ See, e.g., Long Beach Unified District, File No. SLD-367394, CC Docket No. 02-6, Order, DA 07-2695 (WCB rel. June 20, 2007); Long Beach Unified District, File No. SLD-367370, et al., CC Docket No. 02-6, Order, DA 07-2695 (WCB rel. March 13, 2007); Friendship House, File No. SLD-314307, CC Docket No. 02-6, Order, DA 06-2462 (WCB rel. December 4, 2006); and Academia Discipulos de Cristo, File No. SLD-358081, 358083, et al., CC Docket No. 02-6, Order, DA 06-1642 (WCB rel. August 15, 2006); Keyport School District, 24 Rcd 12702, CC Docket 02-6, (TAPD rel. October 20, 2009); and Cook Telecom, Inc., 24 FCC Rcd 7611 (TAPD June 3, 2009), all of which granted appeals of a USAC decision based on Petitioner’s compliance with the rules in effect at the time of Petitioner’s initial filing.

¹⁸ Reply Comments of the Universal Service Administrative Company, Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, WC Docket No. 05-195, et seq, December 19, 2005 at 85.

¹⁹ *Id.* at 85-86.

²⁰ June 4 Letter at 1.

the new gift rules proposed by the Commission in the Notice of Proposed Rulemaking adopted on May 20, 2010.

On May 20, 2010, the Commission adopted a Notice of Proposed Rulemaking in which it “propose[d] that the following behaviors constitute inappropriate conduct during the competitive bidding process: / . / . / . Service providers may not offer or provide gifts, including meals, to employees or board members of the applicant.”²¹ On September 23, 2010, the Commission adopted a Sixth Report and Order in which it amended its rules to apply the federal rules concerning gifts and extended the applicability of these new rules beyond the competitive bidding period.²² More particularly, in paragraph 88 of the Sixth Report and Order, the Commission adopts new rules that reflect the use of the gift rules that are applicable to federal agencies – “prohibit[ing] a federal employee from directly or indirectly soliciting or accepting a gift given as a result of the employee’s official position,” [fn. omitted] except for defined gifts of little value.”²³

Indeed, the newly adopted “gift” rules demonstrate the significant differences between the rules in effect in 2007-2008 and the rules adopted on September 23, 2010. The Commission’s rules applicable to the competitive bidding process that were in effect during the 2007-2008 timeframe do not contain any reference to the federal gift rules or any of their substance. The Commission’s new rule also states that “the restriction on gifts is always applicable, and is not in effect or triggered only during the time period when the competitive

²¹ See *In the Matter of Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan For Our Future*, CC Docket No. 02-6; GN Docket No. 09-51, Notice of Proposed Rulemaking, 25 FCC Rcd 6872, para. 29 (May 20, 2010) (proposing to “identify inappropriate conduct **during the competitive bidding process**” as including: “Service providers may not offer or provide gifts, including meals, to employees or board members of the applicant.” (emphasis added)) (“Notice of Proposed Rulemaking”).

²² *In the Matter of Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan For Our Future*, CC Docket No. 02-6; GN Docket No. 09-51, FCC 10-175, Sixth Report and Order, 2010 FCC LEXIS 5840, paras. 87-89, released September 23, 2010 (“Sixth Report and Order”).

²³ *Id.* at para. 88.

bidding process is taking place” because “gift activities that undermine the competitive bidding process may occur outside the bidding period.”²⁴ The Commission’s rules in effect during the 2007-2008 timeframe do not contain any mention that would support the extension of a gift prohibition outside the competitive bidding process.

As products of a legislative rulemaking proceeding, these new rules are necessarily for prospective application only.²⁵ The substantial nature of the amendments and the degree of specificity added to the rules also requires a prospective application only.²⁶ In this case, the Charlotte County School District as well as many other school districts, acted in reliance on the state of the rules in effect at the time. It would be fundamentally unfair to apply the newly adopted rules retroactively to events that occurred more than two years ago and which have no demonstrable effect on any competitive bidding process. Indeed, the Commission does not state any intention to apply these new rules in a retroactive manner.

Nonetheless, the USAC’s actions in this case are consistent with a premature implementation of these newly adopted rules. In the instant situation, the conduct identified by the USAC as creating a violation of the competitive bidding rules occurred in the 2007-2008 time period. The recently adopted rules are not yet in use so they will take effect no earlier than 2.5 or 3 years after the conduct in question. The Charlotte County School District submits that the Commission must use the rules in place at the time of the events; these rules did not include

²⁴ *Id.*

²⁵ See, e.g., *Clark-Cowlitz Joint Operating Agency v. FERC*, 826 F.2d 1074, 1082 (D.C. Cir. 1987) (“[T]he Administrative Procedure Act generally contemplates that when an agency proceeds by adjudication, it will apply its ruling to the case at hand; when, on the other hand, it employs rulemaking procedures, its orders ordinarily are to have only prospective effect.”).

²⁶ The D.C. Circuit has established a non-exhaustive list of five factors to assist courts in determining whether to grant an exception to the general rule permitting “retroactive” application of a rule enunciated in an agency adjudication: “(1) whether the particular case is one of first impression, (2) whether the new rule represents an abrupt departure from well established practice or merely attempts to fill a void in an unsettled area of law, (3) the extent to which the party against whom the new rule is applied relied on the former rule, (4) the degree of the burden which a retroactive order imposes on a party, and (5) the statutory interest in applying a new rule despite the reliance of a party on the old standard.” *Id.* at 1081.

an absolute prohibition of any reimbursed expenses regardless of the amount, timing, or relevance to the competitive bidding process or other circumstances.

D. A Proper Application of the Rules and Policies in Effect in the 2007-2008 Timeframe Demonstrates that there Was no Violation of the Competitive Bidding Rules in this Case.

Applying the rules and policies in effect during FY2008, the relevant timeframe for evaluating applicant and service provider conduct is the competitive bidding process.²⁷ That process begins with the posting of the FCC Form 470, in this case November 6, 2007, and is completed 28 days later, in this case December 4, 2007.²⁸ This is the relevant timeframe for the USAC's evaluation. All events identified by the USAC in this case occurred outside of any competitive bidding process and, under applicable rules, the inquiry should end there. Nonetheless, the events themselves have no connection whatever to any competitive bidding process and the USAC presented no evidence to the contrary.

The Commission has stated that the competitive bidding process must be “fair and open.”²⁹ According to USAC, the term “fair” means that all bidders are treated the same and that no bidder has advance knowledge of the project information.³⁰ The term “open” means there are no secrets in the process – such as information shared with one bidder but not with others – and that all bidders know what is required of them.³¹ While the USAC states that “the documents provided by you and/or your vendor indicate that there was not a fair and open competitive

²⁷ Notice of Proposed Rulemaking at para. 29. The expansion of the prohibition outside of the competitive bidding process was proposed in the May, 2010 Notice of Proposed Rulemaking and adopted in the Sixth Report and Order in September, 2010. This amendment was not in effect in 2007- 2008 and, as of the date of this Request for Review, the amendment is still not in effect.

²⁸ <http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx> (visited October 11, 2010) (competitive bidding process opens with the posting of the FCC Form 470; <http://www.universalservice.org/sl/tools/news-archive/2010.aspx> (visited October 11, 2010) (competitive bidding process closes at end of 28-day period and before filing of the FCC Form 471).

²⁹ Notice of Proposed Rulemaking at para. 26, n. 46; *See also*, <http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx> (visited October 8, 2010).

³⁰ <http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx>.

³¹ *Id.*

bidding process free from conflicts of interest,” it utterly failed to even allege any “sharing of information with one bidder but not with others” or that any “bidder had advance knowledge of the project information.”

The Commission has characterized violations of the competitive bidding process as follows:

Moreover, consistent with precedent, it is a violation of the Commission’s competitive bidding rules if: (1) the applicant has a relationship with a service provider **that would unfairly influence the outcome of a competition or would furnish the service provider with “inside” information**; (2) someone other than the applicant or an authorized representative of the applicant prepares, signs and submits the FCC Form 470 and certification; [fn. omitted] (3) a service provider representative is listed as the FCC Form 470 contact person and that service provider is allowed to participate in the competitive bidding process; [fn. omitted] (4) a service provider prepares the applicant’s FCC Form 470 or participates in the bid evaluation or vendor selection process in any way [fn. omitted].³²

With respect to item (1), the Commission clarified, “that an existing relationship between an applicant and its existing service provider does not violate the rule that the competitive bidding process remain fair and open.”³³ Moreover, in the pre-bidding time period, applicants may discuss their product offerings with service providers and learn about new technologies from service providers.³⁴ Thus, it is not an existing relationship between an applicant and its existing service provider that is prohibited. Rather, it is when such a relationship **would unfairly influence the outcome of a competition or would furnish the service provider with “inside” information** that the behavior is proscribed. The USAC has presented no evidence that anything about the existing contractual relationship in this case “unfairly influence[d] the outcome of a competition or furnish[ed] the service provider with “inside” information.”

³² Sixth Report and Order at para. 86.

³³ *Id.*

³⁴ See USAC 2009 Fall Training and Presentations, http://www.usac.org/sl/about/training-presentations/training-presentations-archive/training-2009/fall/materials.aspx?WT.mc_id=sl-newsbrief-20090918 (visited October 8, 2010) -- USAC, SLD, “Program Compliance,” September/October 2009 at slide 4.

The Commission's case law and policy determinations relating to the competitive bidding process contain very little guidance with respect to the payment of an applicant's expenses by a service provider. The Commission's rules, namely, Sections 54.503 and 54.504 do not contain any reference to a relationship between an applicant and a service provider or "gifts, meals, gratuities, or entertainment" and case law guidance on "gifts, meals, gratuities, or entertainment" is limited. Particularly, for purposes of the relevant time period, the Commission has not provided any guidance as to when the payment of an applicant's expenses for "gifts, meals, gratuities, or entertainment" rise to the level of an "unfair influence [on] the outcome of a competition."

Moreover, although not identified in Section 54.504(c) (1) of the Commission's rules in the list of certifications to be required of an applicant, item 29 of FCC Form 471 requires a certification that "the Billed Entity has not received anything of value or a promise of anything of value, other than services and equipment requested under this Form 471, from the service provider(s), or any representative or agent thereof or any consultant **in connection with this request for services.**"³⁵ This means that there must be a connection between the receipt of anything of value and the request for services contained in a particular FCC Form 471. Thus, if the expenses that were reimbursed are unrelated to the request for services in a pending FCC Form 471, the certification language does not apply to the reimbursement as a violation of the fair and open requirement of the competitive bidding process. In any event, the USAC did not mention this certification in either its June 4 Letter or its September 15, 2010 FCDL as a basis for denial of the subject FRN.

³⁵ 47 C.F.R. Section 54.504(c)(1); FCC Form 471 at item 29 (emphasis added); Instructions for FCC Form 471, item 29.

The USAC's advice to service providers at the time of the expenses in question and the filing of the FCC Form 471 was: "Do not provide free services and/or gifts to **ensure bid selection.**"³⁶ While USAC does not provide the basis for this advice, its concern was clearly that service providers should not provide free services or gifts to the applicant **for the purpose of ensuring selection in the competitive bidding process.**

In advising against a purposeful linkage between such gifts and bid selection, the USAC's advice did not extend to situations where the gifts occurred outside of the competitive bidding process or had no relationship to any services identified in a FCC Form 471. Thus, according to the USAC's own advice, in order for the receipt of anything of value from a service provider to threaten the openness and fairness of a competitive bidding process, it must be the result of an effort by the service provider to "ensure bid selection." Of course, that requires a competitive bidding process in which to "ensure bid selection."

Without a transparent, fact-based analysis, a USAC conclusion that gifts were provided to ensure selection in a competitive bidding process is bare and unjustified. Indeed, as recently as last year, the USAC was advising service providers and applicants that it would review gifts on a case-by-case basis to determine whether they violate Commission rules for a fair and open competitive bidding process.³⁷

³⁶ See www.usac.org/res/.../about/.../sl-overview-service-providers-brochure.pdf ("What To Do and How To Do It," Mel Blackwell and John Noran, 2008 Service Provider Training, Schools and Libraries Division at slide 22); see also "Service Provider Do's and Don'ts," Mel Blackwell and John Noran, 2007 Service Provider Training, Schools and Libraries Division at slide 22) (emphasis added).

³⁷ See USAC 2009 Fall Training and Presentations, http://www.usac.org/sl/about/training-presentations/training-presentations-archive/training-2009/fall/materials.aspx?WT.mc_id=sl-newsbrief-20090918 (visited October 8, 2010) -- USAC, SLD, "Issues in Competitive Bidding," September/October 2009 at slide 17. It bears noting that in its training presentations being given in the Fall of 2010, the USAC has incorporated all the new gift rules adopted by the FCC on September 23, 2010.³⁷ This appears to be in anticipation of these new rules becoming effective. Yet, it is these newly adopted gift rules that the USAC has applied in the case of the Charlotte County School District FY2008 requests. Clearly, the USAC has not only gotten ahead of the Commission's adoption of the new gift rules but has erroneously applied the proposed rules retroactively as if they were applicable to the 2007-2008 time period even if they had been adopted and become effective as of the time of the USAC's June 4 Letter and September 15, 2010 FCDL.

The USAC decision in the September 15, 2010 FCDL leaves no room whatever for an *ad hoc* fact-specific evaluation of particular cases. The USAC adopted the position in this case that in the 2007-2008 time period, **any** “gifts, meals, gratuities, entertainment of **any** amount from the service provider” prior to/throughout a contractual relationship between an applicant and a service provider result in a competitive process that is no longer fair and open **regardless of the circumstances**. This means that, according to the USAC, a service provider may not provide an applicant any “gifts, meals, gratuities, or entertainment” of any amount at any time during an existing contract regardless of how far removed from any competitive bidding process or the lack of relationship between the circumstances of the “gifts, meals, gratuities, or entertainment” and the competitive bidding process. This “zero tolerance” position is extreme and divorced from the applicable law in effect at the time and even its own advice during the 2007-2008 time period. The Commission’s rules, in effect during the relevant time period, did not unconditionally prohibit the receipt of “gifts, meals, gratuities, entertainment from the service provider” prior to/throughout a contractual relationship between an applicant and a service provider. Moreover, there was no guidance as to the amount of such “gifts, meals, gratuities, or entertainment,” the timeframe within which they may or may not be provided or the circumstances surrounding them.

The Charlotte County School District submits that, during the relevant time period, the determination of whether gifts were provided to ensure selection in a competitive bidding process is necessarily an *ad hoc* process that requires a case-by-case assessment of whether the timing, amount and nature of the “gifts, meals, gratuities, or entertainment” in question rise to the level of an “unfair influence [on] the outcome of a competition.” As such, it requires

consideration the timing, amount of the expenses and circumstances surrounding the “gifts, meals, gratuities, or entertainment” at issue here. The USAC did not do that in this case.

1. Timing

The competitive bidding process commenced with the posting of the FCC Form 470 on November 6, 2007 and it concluded 28 days later, on December 4, 2007. Trillion Partners was selected as the winning bidder on December 4, 2007 and was awarded the contract on January 22, 2008. The FCC Form 471 was filed on February 8, 2008. In its September 15, 2010 FCDL, USAC does not identify what particular expenses are at issue, the amount of those expenses or the timeframe it considered. The June 4 Letter identifies the two Trillion Partners-sponsored customer conferences, a Trillion Partners Expense Summary provided by Trillion Partners and a June 25, 2009 email from Mr. Bress to Ms. Barbara Cannon of USAC relating to certain lunch expenses. Based on the fact that the USAC denied funding only for the FY2008 request, the Charlotte County School District submits that the timeframe used by the USAC for expenses paid by Trillion Partners must bear some relationship to the 2007 competitive bidding process that led to the February 1, 2008 request for funding to commence on July 1, 2008.

The “gifts, meals and entertainment” noted by the USAC are limited to expenses associated with conferences held in August, 2007 and in June, 2008, and a few occasional lunches of minor value. In the case of the 2007 expenses, they were incurred approximately three months before the competitive bidding process began. In the case of the 2008 expenses, they were incurred approximately six months after the competitive bidding process had concluded and approximately four months after the FCC Form 471 was filed. Significantly, there is no connection, apparent or otherwise between the conferences or the payment of the expenses on the one hand and a competitive bidding process on the other.

As noted, at the time of the 2007 conference, the 2003 contract was still in effect and the existing contractual relationship between the Charlotte County School District School and Trillion Partners was consistent with traditional and lawful notions of a customer/vendor relationship, as allowed by the applicable Commission rules. No aspect of that relationship affected any competitive bidding process. Once a competitive bidding process is over and a vendor has been selected, it is hard to discern how the post-selection contractual relationship can taint that competitive bidding process or, for that matter, a future competitive bidding process that has not yet begun or even been announced. Moreover, the nature of the relationship with a vendor is markedly different after selection and during a contract period because of the need to accommodate the discussions and meetings that are necessary for the vendor to fulfill its contractual obligations and for the Charlotte County School District to obtain the benefits of the contract.

2. Amount of the Expenses

In its September 15, 2010 FCDL, the USAC does not identify what particular expenses are at issue or the amount of those expenses or the timeframe it considered. Nonetheless, the Trillion Partners Expense Summary referenced by the USAC in its June 4 Letter covers three calendar years, 2006, 2007 and 2008. The only competitive bidding process that occurred during that three-year period was the 28 days from November 6, 2007 through December 4, 2007. It is unclear why the USAC would believe that calendar year 2006, particularly July, 2006, has any relevance to a competitive bidding process that occurred 15 months later, at the end of 2007. Nevertheless, for calendar year 2006, the Trillion Partners Expense Summary indicates a total of \$488.58 all of which except for \$9.00 are for conference-related expenses.³⁸ For calendar year 2007, the Trillion Partners Expense Summary indicates a total of \$638.14 all of which except for

³⁸ The remaining \$9.00 was for a breakfast.

\$10.32 are for conference-related expenses in the month of August.³⁹ This is approximately three (3) months before the commencement of the competitive bidding process. For calendar year 2008, the Trillion Partners Expense Summary indicates a total of \$534.53 all of which are for conference-related expenses in the months of May and June. This is approximately six (6) months after the conclusion of the competitive bidding process.

The 2007 competitive bidding process for a \$2.5 million WAN and Internet services five year contract commenced with the filing of the FCC Form 470 on November 6, 2007 and was concluded with the selection of Trillion Partners on December 4, 2007. Even if the timing of the conference were in any way proximate to the competitive bidding process – which it was not – the total amount of the identified expenses for calendar year 2007 and even through the filing of the FCC Form 471 on February 1, 2008, was only \$638.14.⁴⁰ The notion that payment of \$638.14 in expenses associated with an industry conference which has no demonstrated relevance to a competitive bidding process⁴¹ would somehow prejudice the Charlotte County School District in favor of awarding a \$2.5 million contract to Trillion Partners – a notion which the USAC all too readily embraces – is simply not tenable.

The mere fact that Trillion Partners paid the expenses of an existing customer associated with attendance and a speaking engagement at a conference it organized specifically for its existing customers and that focused on the exchange of ideas and experiences among school districts and the improvement of the level of knowledge in critical areas with only general marketing unrelated to any competitive bidding process in substance or timing does not automatically mean that a competitive bidding process that had not even begun or been otherwise announced was somehow tainted. The competitive bidding rules in effect require that such

³⁹ The remaining \$10.32 was for a lunch.

⁴⁰ See Trillion Partners Expense Summary.

⁴¹ See discussion of the conferences *infra*.

situations be judged on an *ad hoc*, fact-driven, case-by-case basis. Even if the conference were considered to be sufficiently proximate in time to the competitive bidding process to warrant consideration, it defies common sense to leap to a conclusion that a school district would endanger a \$2.5 million contract or a single year \$500,000 funding request in order to have \$638.14 in travel and lodging expenses paid for a non-decision maker to attend a customer conference.

In its June 4 Letter, the USAC states that in the Charlotte County School District's June 25, 2009 email response to a data request from Mrs. Barbara Cannon of USAC, "Mr. Bress discusses that he did receive lunch meals from Trillion Partners representatives." Mr Bress's full response in this regard consists of the following:

When representatives from Trillion would come to the school district they would often offer to take me out to lunch. I took them up on their invitation on a few occasions. I considered the frequency of their visits to be normal and I did not take it as out of the ordinary. I am sorry, but I do not have a log of dates as to when this happened. The places that we went to lunch at were on the par of Applebees or TGI Fridays. None of the locations were excessive.

While Mr. Bress's response explains that he cannot quantify the cost of the lunches, it is clear from the wording that the occasions were few, that the cost of the lunches was minor and that they were in the ordinary course of business. The Charlotte County School District takes this opportunity to clarify further that none of these lunches occurred during a competitive bidding process, that there were no discussions at the lunches concerning any competitive bidding process or the services that would be part of any such process, and that the discussions that did occur at the lunches were solely related to the implementation of services under an existing contract.⁴² On this basis, the Charlotte County School District submits that these lunches should not form the basis for denial of an FRN with a value of approximately \$500,000.

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See Declaration of Christopher Bress appended hereto.

3. Circumstances

At the time of either the 2007 or the 2008 conference, described below, the five-year contract between the Charlotte County School District and Trillion that commenced with FY2003 was still in effect and Charlotte County School District was an existing customer of Trillion Partners.⁴³ Participation in the conferences by the Charlotte County School District was related to the then-existing contract, not any former or future competitive bidding process.

The conferences in question, termed Visionaries in Technology Education Counsel (“VTEC”) conferences by Trillion Partners in a letter to Mel Blackwell of USAC dated June 8, 2009, were “educational conference[s] for existing Trillion customers after they were under contract with Trillion. This was a participant-driven conference focused on education-oriented best practices. The main goal was improving education and the application of technologies to achieve this goal. Guest speakers included nationally renowned speakers including a University professor and a learning technology expert, neither of whom were associated with Trillion. Each participant shared their thoughts in an open discussion forum on what they generally thought would shape education in the years to come.”⁴⁴ Trillion Partners treated all attendees in the same manner whether or not the vendor-customer relationship was the result of a USAC-related competitive bidding process and contract award. The expenses of all attendees were paid by Trillion Partners as the conference sponsor.

Expenses associated with the VTEC conferences or the substance of the conferences themselves in no way affected any competitive bidding process and these conferences only

⁴³ “Once an applicant submits an FCC Form 470 and complies with the 28-day posting period, the applicant is permitted to sign a long-term contract at that time.” Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order, DA 99-1773, 1999 WL 680424 (Com. Car. Bur. 1999), para. 10 (“We conclude that permitting a school or library to commit to a long-term contract after participating in the competitive bidding process does not compromise the benefits derived from competition. As long as all providers have had the opportunity to compete for the same contract, schools, or libraries can enter into renewable contracts of any length or form, as permitted by state law.”)

⁴⁴ Trillion Response/Appeal at 2.

included existing customers based on existing contracts who wished to discuss education issues with their peers.

The centerpiece of the first day of the VTEC conference held on June 24-25, 2008, was a session among participating school districts where the Technology Director of each participating school district had the opportunity to share a best practice or improvement implemented in the past year, noting details on how the changes affected students' scores, retention rates, or resulted in a positive impact for educators & administrators. The keynote speaker on the second day of the conference was a university professor who specializes in learning technology and who spoke on best practices in technology planning and management and computer-supported collaborative learning. Neither the participant-driven session nor the keynote speaker session involved a Trillion Partners' presentation regarding any services that were the subject of any current competitive bidding process. The same can be said for (a) a session involving representatives of Compass Learning on the subject of using technology to drive education, focusing on the use of brain research findings showing how children maximize learning by using computer applications; and (b) a [Shoretel] company that made a presentation on the VOIP roadmap for unified communications, detailing next generation features.

The presentations that were made by Trillion Partners were either Q & A sessions that provided the representatives of the school districts access to Trillion Partners technical personnel and general marketing, in either case nonspecific to any participation in or the services that were the subject of an ongoing or upcoming competitive bidding process.

The Charlotte County School District submits that attendance at these types of conferences by applicants are in the best interest of the E-rate program in that they serve as a

forum for the exchange of ideas and experiences among school districts and improve the level of knowledge in critical areas on a neutral basis.

As noted on the Trillion Partners Expense Summary submitted by Trillion Partners with its June 21, 2010 appeal in this case, Mr. Bress's subject transportation and lodging expenses reimbursed by Trillion Partners were in connection with his attendance at the 2007 and 2008 VTEC conferences at which he was an invited speaker.⁴⁵ Mr. Bress is very well regarded and knowledgeable in matters concerning technology for educational institutions. Indeed, he is the current President of the Florida Council of Instructional Technology Leaders (the FCITLTM), a non-profit organization whose purpose is to (a) promote the enhancement of the instructional process through the effective use and integration of technology; (b) promote cooperation and communication among the district and state leaders who impact technology use in education; (c) positively influence legislation and policies regarding funding, development, and integration of instructional technology use in Florida; and (d) recognize the vital role of the instructional technology professional and promote professional growth opportunities.⁴⁶

Mr. Bress has been a speaker at several conferences sponsored by many different companies, and each time, the conference sponsor has paid his travel, accommodation and meal expenses.⁴⁷ This is the only way that representatives of school districts can afford to attend and

⁴⁵ See Trillion Partners Expense Summary, attached to the June 4 Letter.

⁴⁶ See <http://www.fcitl.org/aboutUs.asp> (visited October 20, 2010). FCITL membership consists of (a) personnel from a public school district who have district-wide responsibilities; (b) DOE personnel; (c) private school personnel; (d) post-secondary personnel; (e) persons who have retired from any of the preceding positions; and (f) personnel from an organization with a public school district as a fiscal agent and Education consortia personnel. See *id.*

⁴⁷ The following articles indicate why the Charlotte County School District and Mr. Bress in particular are well regarded in the education technology space:

<http://thejournal.com/articles/2007/09/01/disaster-recovery--courting-disaster.aspx>

<http://www.edtechmag.com/k12/issues/january-february-2009/going-the-distance.html>

<http://thejournal.com/articles/2010/08/01/shape-throttle-and-roll.aspx>

http://www.pcworld.com/businesscenter/article/144637/guide_to_secure_web_gateways.html

<http://www.techlearning.com/article/26260>

be speakers at such conferences without relying on scarce public school district funds. Mr. Bress attends and speaks at these conferences for the purpose of staying abreast of changes to the rapidly evolving technology and the availability of new services, and to share his knowledge and experiences with other school districts whose representatives also attend the conferences.

Mr. Bress is the Director of Learning Through Technology for the Charlotte County School District.⁴⁸ Decisions concerning the award of contracts for the Charlotte County School District are made by the Charlotte County School District Board. Mr. Bress is not a member of the Charlotte County School District Board and in no way was a decision maker with respect to the selection of service providers subject to a competitive bidding process. Indeed, Mr. Bress is a staff member who works at the direction of the Superintendent of the Charlotte County School District and it is the Superintendent that makes contract and vendor recommendations to the Charlotte County School Board.

The June 4 Letter refers the Charlotte County School District to the USAC website at: <http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx> for "additional guidance regarding the competitive bidding process." There, USAC states that:

[i]n order to be sure that a fair and open competition is achieved, any marketing discussions held with service providers must be neutral, so as not to taint the competitive bidding process." That is, the applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow it to unfairly compete in any way.

http://www.bluecoat.co.jp/customers/pdf/casestudy_charlotte.pdf
<http://www.edtechmag.com/k12/issues/april-may-2010/a-touching-story.html>
<http://www.edtechmag.com/k12/events/videos/videos.html>

⁴⁸ The Learning Through Technology department supports the use and growth of instructional technology in Charlotte County Public Schools. Under the supervision and control of the Charlotte County School District administration, it is tasked with the responsibility of supplying the hardware, software, and Internet bandwidth the Charlotte County School District schools and students need to be successful in a digital world.

The Charlotte County School District **did not** have a relationship with Trillion Partners that unfairly influenced the outcome of a competition or furnished Trillion Partners with any “inside” information or allowed it to unfairly compete in any way. Throughout the time period in question, the relationship that the Charlotte County School District has had with Trillion has been that of vendor-customer as a result of an existing contract awarded pursuant to USAC-related competitive bidding processes, and not in anticipation of a future award of a contract in a USAC-related competitive bidding process. As a practical matter, communication between a school district and its existing vendors is essential in order for the school district to obtain the full benefits of the services being provided under a currently-effective contract. As described above, all communication with Trillion Partners at the conferences were associated with the subject expenses was of a general marketing nature conducted in a neutral manner that could not and did not bear any relation to a competitive bidding process. The Charlotte County School District respectfully submits that it was not the intent of USAC or the FCC to preclude any communication because of a past or indeterminate future participation by those vendors in an unrelated competitive bidding process.

There has been no evidence presented that Mr. Bress or anyone else at Charlotte School District had any communication whatsoever with a representative of Trillion Partners at any of the conferences or at any other time concerning the procedures or the substance of any pending or planned competitive bidding process that could reasonably be thought to have provided Trillion Partners with any kind of inside information or other undue preference. There has also been no evidence whatsoever presented that there was a competitive bidding process underway at the time of the conferences or that any such future process was in any way influenced by the

conferences, any communication at the conferences or the reimbursement of the expenses in question. No such evidence was presented because it does not exist.

Finally, The USAC has not even questioned the FCC Form 470 (36708000062396) posted on November 6, 2007. That FCC Form 470 is very straightforward and the request for services is impartially drafted. It was not tailored to suit any one company or type of company and no evidence to the contrary has been presented. The FCC Form 470 was intended to attract as many competitive bidders as possible while assuring that it accurately reflected the status of the project and that the needs of the Charlotte County School District would be met. It is unfortunate that only one bidder, Trillion Partners, responded to the FCC Form 470. However, the Charlotte County School District cannot account for why that was the case but it can state definitively that it was not the result of any unfair conduct by the Charlotte County School District.

The Charlotte County School District has always fully understood that “the competitive bidding process must be fair and open. / . / . [and that] ‘Fair’ means that all bidders are treated the same and that no bidder has advance knowledge of the project information. / . / . [and that] ‘Open’ means there are no secrets in the process – such as information shared with one bidder but not with others – and that all bidders know what is required of them.”⁴⁹ Charlotte County School District's competitive bidding process and treatment of bidders fully comports with these admonitions and no evidence to the contrary has been presented. While having only one bidder respond is not optimal, the reason likely involves economic conditions, the fact that much of the network was already constructed under the initial five-year contract and that Trillion happens to be the leading provider of the type of services that are sought by school districts in these types of

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<http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx>.

requests for services.⁵⁰ Nonetheless, in effect, the fact that Trillion Partners was the only bidder in response to the FCC Form 470 means that that once the competitive bidding process concluded on December 4, 2007, there was not even an opportunity for unfair or anticompetitive behavior in the consideration of the Trillion Partners bid by the Charlotte County School District.

During the relevant timeframe, the Commission required that routine business meals and expenses involved in attending the VTEC conference must comply with state and local procurement laws and regulations, and that there are no federal guidelines that apply to participants on this issue. The Charlotte County School District has certified compliance with state and local procurement laws and regulations⁵¹ and such compliance is not an issue in this case. Indeed, the USAC did not raise this matter in either its June 4 Letter or its September 15, 2010 FCDL.

⁵⁰ As Trillion Partners states on its own website, "Trillion is the largest national service provider of fixed wireless and fiber wide area networks for K-20 school districts in the country. We currently manage over 200,000 miles of networks and provide services to over 1,000 schools coast to coast in the United States." www.trillion.net/about/.

⁵¹ See Exhibit B hereto.

III. CONCLUSION

The Charlotte County School District has been and continues to be very proud of the good work that it has done in coordinating the delivery of advanced technology services to its K through 12 schools and students and doing so in compliance with USAC program rules and guidelines. For the reasons explained above, the Charlotte County School District urges the Commission to grant this Request for Review and reverse the USAC's denials of the funding request in this case.

For all the foregoing reasons, the Commission should grant the Charlotte County School District's appeal of the Administrator's Decision and the underlying funding decision and remand its subject FY 2008 funding request to USAC for approval.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard Rubin", with a stylized flourish at the end.

Richard Rubin
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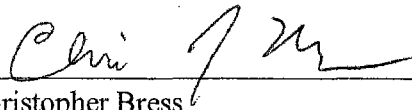
Counsel for Charlotte County School District

November 1, 2010

DECLARATION OF CHRISTOPHER BRESS

I, Christopher Bress, under penalty of perjury, do hereby state and depose:

1. I am the Director of Learning Through Technology for the Charlotte County School District and have held that position since July 1, 1997.
2. I have read and am familiar with the foregoing "Charlotte County School District Request For Review Of Decision By The Universal Service Administrative Company."
3. The factual allegations stated in the foregoing "Charlotte County School District Request For Review Of Decision By The Universal Service Administrative Company" are true and correct to the best of my information, knowledge and belief.



Christopher Bress

Date: November 1, 2010